

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 04-224
Table of Allotments,) RM-10853
FM Broadcast Stations.) RM-10854
(Lake Havasu City, Arizona, and Pahrump,)
Nevada))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 2, 2004

Released: February 4, 2004

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making*¹ issued in response to two mutually exclusive Petitions for Rule Making filed by SSR Communications Incorporated ("SSR Communications") and Steven M. Greeley ("Greeley"), licensee of Station KJJJ(FM), Channel 272B, Lake Havasu City, Arizona.² SSR Communications and REC Networks filed comments. Greeley filed a counterproposal.³ No other comments or counterproposals were received in this proceeding.

2. **Background.** The *Notice* set forth two mutually exclusive petitions for rule making. The first proposal, filed by SSR Communications, proposed the allotment of Channel 272C3 at Pahrump, Nevada, as that community's third local service. The second proposal, filed by Greeley, requested the substitution of Channel 272C for Channel 272B at Lake Havasu City, Arizona, reallocation of Channel 272C from Lake Havasu City to Pahrump, Nevada, as its third local service, and modification of Station KJJJ(FM)'s license accordingly.

3. SSR Communications filed comments, supporting its proposal over Greeley's proposal because the SSR proposal would provide a third local service at Pahrump without depriving Lake Havasu City of its Class B FM station. REC Networks, an entity representing the interests of low power FM ("LPFM") stations and listeners, filed comments, arguing that a Class C3 allotment would serve the public interest better than a Class C allotment at Pahrump because a Class C station would result in radiation of signals into significant areas where there is no population. REC asserts that a Class C3 allotment would therefore be a more efficient use of the spectrum and would not affect the expansion of LPFM service as much as a Class C allotment. To resolve the existing conflict between the rulemaking petitions, Greeley suggested the allotment Channel 261C3 in lieu of the proposed Channel 272C3 at Pahrump, as its third local service. To accommodate this allotment, Greeley proposed the substitution of Channel 287A for vacant Channel 261C at Beatty, Nevada.

¹ *Lake Havasu City, Arizona, and Pahrump, Nevada*, 19 FCC Rcd 10340 (MB 2004) ("Notice").

² Station KJJJ(FM) is licensed on Channel 272C2 and has an outstanding construction permit for Channel 272B at Lake Havasu City.

³ Greeley's pleading is not technically a counterproposal because it is not mutually exclusive with either of the *Notice's* proposals. Rather, it is an alternate allotment scheme to resolve the conflict between the *Notice's* proposals.

4. **Discussion.** As discussed in the *Notice*, both proposals cannot be accommodated in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's rules because the proposals are located 9.6 kilometers apart, whereas the minimum distance separation requirement is 237 kilometers. Therefore, each proponent was provided with an opportunity to demonstrate in its comments why its requested channel should be allotted to Pahrump based on the allotment criteria for the FM allotment priorities.⁴ Additionally, the proponents were given an opportunity to demonstrate if other channels were available to resolve the existing conflict. As such, Greeley suggested the allotment of Channel 261C3 in lieu of Channel 272C3 at Pahrump. However, this alternate proposal is technically defective because the proposed 70 dBu contour for Channel 261C3 would not provide one hundred percent city grade coverage to Pahrump. Specifically, the proposed 70 dbu contour would only provide 94.3 percent city grade coverage. Moreover, the proposed 70 dBu contour for the proposed Channel 287A at Beatty would not provide one hundred percent city grade coverage to Beatty. The proposed 70 dBu contour would provide 77.7 percent city grade coverage to Beatty.

5. The public interest would be served by allotting at least one channel to Pahrump, as its third local service. Therefore, we must determine which proposal would better serve the public interest by providing Pahrump with a third local service, the drop-in proposal or the reallotment proposal. This determination is based on the policy set forth in *Revision of FM Assignment Policies and Procedures* because the proposals are mutually exclusive and no alternative channels are available to resolve the existing conflict. To this end, the proposals will be evaluated under priority (4), other public interest matters.

6. However, before making this comparison, we must determine if the reallotment proposal by itself results in a preferential arrangement of allotments based on the FM Allotment priorities by comparing Station KJJJ(FM)'s existing allotment against the proposed reallotment.⁵ Greeley filed its request pursuant to Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest in the proposed allotment.⁶

7. The reallotment of Channel 272C at Pahrump is mutually exclusive with the current authorized facilities of Station KJJJ(FM), Channel 272B, Lake Havasu City, Arizona. The Pahrump reallotment would result in a third local service because the community currently receives local service from Stations KNYE(FM) and KXTE(FM), while the retention of local service at Lake Havasu City would retain a sixth local service.⁷ As such, viewed by itself, the proposed Pahrump reallotment would result in a preferential arrangement of allotments based on priority (4), other public interest matters, because Pahrump's need for a third local service outweighs Lake Havasu City's need for a sixth local.

8. However, Greeley's reallotment proposal is not before us as a "singleton" proposal. Rather, it is mutually exclusive with SSR's proposal to allot Channel 272C3 to Pahrump. In comparing a "drop-in" proposal for a new allotment and a reallotment and change of community of license proposal under Section 1.420(i), we take into account the "totality of the service improvements" resulting from the

⁴ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)].

⁵ *Id.*

⁶ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part* 5 FCC Rcd 7394 (1990).

⁷ Stations KJJJ(FM), KBBC-FM, KNLB(FM), KRRK(FM) and KZUL-FM, as well as KNTR(AM) are currently licensed to Lake Havasu City.

proposed new and modified allotments under Priority 4 of the FM Allotment Priorities.⁸ In making this comparison, the public interest would be better served by granting SSR's proposal to allot Channel 272C3 to Pahrump and denying the reallocation proposal because it would provide an additional transmission service.⁹ Although we recognize that the grant of either proposal would result in a third local aural service to Pahrump (population 24,631), the "drop-in" allotment at Pahrump is preferable because it also preserves a sixth local aural service at the larger community of Lake Havasu City (population 42,000). By way of comparison, preferring the reallocation proposal would result in a total of eight local aural services in these communities.

9. In reaching this result, we do recognize that the proposed Channel 272C reallocation would provide new service to a greater number of persons than the "drop-in" proposal. Specifically, the reallocation would provide new service to 720,526 persons but would also result in a loss of service to 66,661 persons, for a net gain of 653,865 persons. By way of contrast, the proposed Channel 272C3 allotment at Pahrump would provide new service to 27,970 persons. However, we do not believe that the differential in persons to be served by these two proposals is decisionally significant in this case because, with a small exception,¹⁰ almost all of the people in the gain area of the reallocation are well served with five or more reception services. Under these circumstances, we believe that the public interest is better served by making the "drop-in" allotment at Pahrump on Channel 272C3 and denying Greeley's reallocation proposal.

10. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

11. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective March 21, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Communities</u>	<u>Channel No.</u>
Pahrump, Nevada	236A, 272C3, 298C

12. The window period for filing applications for Channel 272C3 at Pahrump will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

13. IT IS FURTHER ORDERED, That the Petition for Rule Making filed by Steven M. Greeley IS DENIED.

14. IT IS FURTHER ORDERED, That the counterproposal filed by Steven M. Greeley IS DISMISSED.

⁸ *See Keeseville, New York, Hartford and White River Junction, Vermont*, 19 FCC Rcd 16106 (MB 2004).

⁹ Channel 272C3 can be allotted to Pahrump, Nevada, in conformity with the Commission's Rules, provided there is a site restriction of 6.1 kilometers (3.8 miles) northwest of the community at coordinates 36-14-09 North Latitude and 116-02-32 West Longitude.

¹⁰ The reallocation would result in a third reception service to 1,725 persons. However, these "under-served" persons constitute about four percent of the persons in the gain area. If the overall character of the gain area were "under-served," we believe that the differential in coverage of the proposals would be a more significant factor.

15. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

16. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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